

REMARKS

The original application included claims 1-41 are pending in this application. With the present Preliminary Amendment, the pending claims are 1-4, 9-10, 15, 17-18, 20-21, 23-24, 27, 29-31 and 35-37. Of these, claims 1 and 27 are independent.

In the parent application, claim 1 had been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,046,422 issued to Ambasz. Applicant had proposed the current amendment to claim 1 in an Amendment After Final Action in the prior application. This amendment was refused entry on the grounds that it would require further consideration and/or an additional search. This amendment to claim 1 has been re-presented in this continuation.

Claim 1 has been amended hereby to indicate that the seat bottom slides in response to deformation of the intermediate portion of the seat member. The intermediate portion is defined as deforming as the seat back pivots. It is believed that Ambasz cannot anticipate amended claim 1 because this reference does not disclose every limitation of the claim 1. In particular, Ambasz does not teach a seat bottom that slides along a bearing surface *in response to deformation of an intermediate portion*.

As a preliminary matter, it is noted that feature 122 of Ambasz was identified in the Office Action as corresponding to Applicants' claimed "intermediate portion". However, as set forth at col. 7, lines 26-29, the feature 122 is an annular flange that is used to connect flexible tubing 122 to the chair back 22. The other end of the flexible tubing is connected to a sleeve 34 that is telescopically mounted on the seat support 36. See, col. 4, lines 28-34. The seat support appears to have been correctly identified in the Office Action as equivalent to Applicants' claimed "bottom support member". However, no equivalent to Applicants' claimed "seat back support member" was identified. It appears that the equivalent structure in Ambasz would be the back support 72 which supports the pivot element 80 about which the seat back 22 pivots.

Although it is not clear from the figures, apparently the seat support 36 and back support 72 are connected in a generally L-shaped configuration. See, col. 4, lines 16-21. Thus, it is clear that these components of Ambasz, seat support 36 and back support 72, are fixed frame members of the chair.

It should also be clear that the seat back 22 pivots independently of anything happening to the seat bottom 20. As shown in FIG. 4A, B, the seat back 22 pivots about the pivot element 80 without causing any movement of the seat back support 72. Likewise, it should be clear that the seat bottom 20 slides along the seat support 36 without causing any movement of the seat support 36. See e.g., col. 4, lines 30-39, 43-48. The only component of the Ambasz seat structure that deforms is the flexible tubing 119, which is provided as a covering to give the chair a pleasing appearance. See, col. 7, lines 22-37. The tubing is formed of a "resilient extensible flexible tubing material". Col. 7, lines 34-35. As can be seen in FIGS. 3A-B and FIGS. 4A-B, the tubing 119 extends as either of the seat components are moved. It does not impart any force between the seat back 22 and seat bottom 20 and is clearly not intended to perform any force transmission function.

Thus, when the Ambasz reference is properly understood, it can be seen that the seat 20 of the chair of Ambasz does not slide along a seat support 36 in response to deformation of tubing 119. (For that matter, the seat back does not pivot in response to deformation of the tubing). Significantly, Ambasz explicitly states, "The back tilts independently of the seat" (lines 10-11 of the abstract), "... a back support 22 that tilts, independently of the position of the seat" (col. 4, lines 9-11), and "... the embodiments ... include the feature of independent forward and backward movement of the seat and tilting of the back" (col. 9, lines 6-9).

It is axiomatic that anticipation of a claim under 35 U.S.C. § 102 is proper only if the prior art reference discloses each and every element of the claim. "For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element

of the claimed invention must be identically shown in a single reference," In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Ambasz cannot anticipate claim 1 since every element of claim 1 is not identically shown in Ambasz.

Moreover, there is nothing in Ambasz that contemplates tying the movement of the seat bottom to the movement of the seat back. As explained above, Ambasz clearly regards the independence of movement between seat back and seat bottom as "highly desirable and advantageous". Col. 9, lines 6-10. In contrast, the present invention relies upon movement of one chair component (sat or back) in response to movement of the other seat component. Because of this lack of independence, the user merely sits back and the chair knows what to do – i.e., the seat bottom automatically slides forward. Similarly, if the user slid the seat bottom forward, the seat back would automatically pivot.

As set forth in claim 1, this unique function is achieved by the intermediate portion of the seat that operates as a force transmission element. In other words, as defined in claim 1, the intermediate portion deforms as the seat back pivots and the seat bottom slides in response to this deformation. Neither this function of Applicants' invention nor the structure defined in claim 1 is even remotely present in Ambasz or any of the other references of record.

Thus, even as Ambasz cannot anticipate Applicants', it is also incapable of rendering Applicants' claimed invention obvious, whether taken alone or in combination with any other reference. Modifying Ambasz to bring it within the realm of Applicants' claimed invention would require destroying a feature of the Ambasz design that the inventor called "highly desirable and advantageous". Moreover, assuming that the flexible tubing 119 of Ambasz is modified to permit force transmission between the chair components, pivoting of the seat back 22 would pull the seat bottom 20 back, which would render the chair virtually unusable. Specifically, when the user reclines to pivot the seat back, the user's lower body shifts forward. As the Ambasz modified seat bottom slides backward,

the user will fall off the edge of the seat! Thus, it cannot be said that Applicants' claim 1 is obvious in view of the Ambasz patent.

In view of the apparent deficiencies in the Ambasz reference, it is believed that claim 1 is allowable. Moreover, claims 2-4, 9-10, 15, 17-18, 20-21, and 23-24 are also in condition for allowance since they depend from an allowable base claim.

It is also believed that the dependent claims of claim 1 are also patentable on their own merits. For instance, in the parent application, claim 2 was rejected as obvious in view of the combination of Ambasz and Caruso. The Caruso reference was cited as disclosing a one-piece shell for a chair, and it was suggested in the Office Action that it would have been obvious to make the Ambasz chair a one-piece shell. It is axiomatic that a proposed combination is improper where the combination would defeat a function of one of the references. In this case, the Ambasz patent highlights the independence of the chair back and chair bottom. Obviously, forming the Ambasz chair from a one-piece shell would completely destroy this independence. In addition, as explained above, even if the chair back and chair bottom are somehow linked, the pivoting movement of the Ambasz chair back would cause the seat bottom to slide backward, which would completely frustrate the seating function of the chair. Not only is there no suggestion to combine Caruso with Ambasz, the proposed combination would destroy the function of the Ambasz chair. Absent any motivation to make the proposed combination, claim 2 is patentable over the art of record.

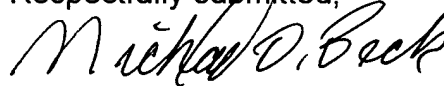
Claim 23 was rejected in the parent application as anticipated by Ambasz on the allegation that this reference discloses the intermediate portion 122 including a recessed slack region as defined in Applicants' claim. Such a slack region 48 is illustrated in Fig. 5 of the present application. First, as noted above, the feature 122 of Ambasz is simply an annular flange. Assuming that the flexible tubing 119 constitutes the intermediate portion, it can be discerned from

the FIG. 1 that the tubing 119 does not include any slack region that is recessed relative to the plane of the seat back. Thus, it is believed that claim 23 is patentable over the art of record.

The next independent claim, claim 27, was also rejected in the parent application as anticipated by Ambasz. However, Ambasz does not teach each and every limitation of independent claim 27. In particular, Ambasz does not teach the *one-piece shell* recited in claim 27. It appears, in view of the obviousness rejection of dependent claim 2 that also defines a one-piece shell, that claim 27 should have been rejected as obvious in view of the combination of Ambasz and Caruso. Nevertheless, even his combination is inadequate, as discussed above. To summarize, it is not possible to combine the one-piece shell feature of Caruso with the Ambasz chair and still retain the functionality of the chair. Consequently, claim 27 is neither anticipated nor rendered obvious by Ambasz, whether taken alone or in combination with Caruso. It is therefore believed that claim 27 is patentable, along with its dependent claims 29-31 and 35-37.

It is believed that the present continuation application, as amended, is in condition for allowance. Action toward that end is hereby requested.

Respectfully submitted,



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